

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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CAROL HILL, et al

**JOINT PRETRIAL ORDER**

Plaintiff, 12-cv-8691

-against-

THE CITY OF NEW YORK, PATRICK QUIGLEY,  
DANIEL CASELLA, BENIGNO GONZALES, BRADLEY  
TIROL, LYHEEM OLIVER, SAMBATH OUK, JOSE  
COFRESI & THE CITY OF NEW YORK

Defendants.  
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**Hellerstein, District Judge**

Having conferred among themselves and with the Court pursuant to Rule 16, Fed. R. Civ. P., the parties adopt the following statements, directions, and agreements as the Pretrial Order:

I. The full caption of the action is as set forth above.

**ii. TRIAL COUNSEL:**

**For Plaintiff**

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Philip J. Smallman

32 Court Street, Brooklyn, NY

**For Defendants City of New York**

**ZACHARY CARTER**

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**iii. SUBJECT MATTER JURISDICTION**

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Plaintiff has brought this matter pursuant to 42 U.S.C. §1983. Subject matter jurisdiction lies because of the federal question presented by this case.

iv: Plaintiff has brought this claim pursuant to 42 U.S.C. §1983. The plaintiff claims that on September 20, 2012 he son Tyjuan Hill, without just cause, was shot and killed by one or more members of the New York City Police Department as named in the caption. This constitutes excessive force in violation of the plaintiff's Constitutional rights pursuant to 42 U.S.C. §1983 and the Due Process Clause of the Fourteenth Amendment to the United States Constitution as to the individually named defendants. In addition, plaintiff claims a conspiracy to deprive her of her Constitutional rights pursuant to 42 U.S.C. §1983 as to all the defendants and other employees of the City of New York. Plaintiff also brings a failure to intervene claim against all defendants to prevent or terminate the shooting which led to her son's death. Finally, plaintiff brings a state law cause of action for wrongful death and State Law Claim for *Respondeat Superior* against the City of New York as a result of same.

v. A marked copy of the pleadings is annexed as the Plaintiff's first exhibit to this Joint Pre Trial Order

**vi. JURY/NON-JURY:**

This case is to be tried before a jury. Plaintiff estimates the matter will take approximately ten business days to be tried.

vii. **CONSENT TO TRIAL BY A MAGISTRATE JUDGE**

The parties have not consented to a trial by a magistrate judge

viii. **STIPULATED FACTS**

None

ix. **PLAINTIFF'S LIST OF WITNESSES:**

- 1.Sgt. Patrick Quigley
2. Sgt. Daniel Casella,
- 3.Sgt. Maggie Clamp
- 4.Sgt. Gregory Tobin
- 5.Det. Christopher Florio
- 6.Detective Patrick Henn
- 7.Detective Thomas Jurewicz
8. Detective Joseph Christophe
9. P.O. Jose Cofresi
10. P.O. Benigno Gonzales
11. P.O. Lyheem, Oliver
- 12.P.O. Cairley Rivera
- 13.P.O. Sambath Ouk
14. P.O. Bradley Tirol,
15. Assistant District Attorney Charles Guria
16. Assistant District Attorney Michael Spannakos

17. Rachel Lange, MD

18. Jude Angelade

19. Jomo Cunningham

20. Brian Ellerby

21. Robert Davis

22. Suzette Smoot, also known as Suzette Pallares

23. Elana Emerson

24. Jose Garcia

25. Carol Hill

**Defense Witnesses:**

1. Sgt. Patrick Quigley

2. Sgt. Daniel Casella,

3 P.O. Jose Cofresi

4. P.O. Benigno Gonzales

5. P.O. Lyheem, Oliver

6 .P.O. Sambath Ouk

7 . P.O. Bradley Tirol

8. Charles Wetli, MD ( expert witness)

4. Defendants object to witnesses ADA's Guria and Spannakos. On July 16, 2016 the Court precluded the ADA's from testifying in this matter because there was no proper showing that these witnesses have potentially relevant information.

5. Defendants reserve the right to use and or introduce some or all of the exhibits listed by plaintiff.

6. Defendants reserve the right to amend or supplement these objections if and when they receive plaintiff's premarked exhibits.

**EXHIBITS:****Plaintiff's Exhibits:**

<b>Ex. #</b>	<b>Description</b>	<b>Basis for Objection</b>
1	The NYPD CSU Diagram prepared in this case Run # 12-752-BNYC bates stamped NYC 01355 & 01356 ( one page)	<i>FRE 403, 403</i>
2	Interview of Sgt. Quigley NYC Bates stamped #1359-1340(Two Pages)	<i>FRE 402, 403, 802.</i>
3	Document labeled 76 Pct UMOS ShootingNYC Bates Stamped 01385 (One Page)	<i>FRE 402, 403</i>
4	NYPD PERSONNEL PROFILE REPORT for def. PATRICK QUIGLEY NYC Bates Stamped 01393- 01394	<i>EXCLUDED FROM EVIDENCE</i>
5	The first page of a report designated as " Firearms Discharge 076 Pct NYC Bates Stamped 01401	<i>FRE 402, 403</i>
6	A document of one page designated " Crime Scene Unit" NYC Bates Stamped # 01406	<i>FRE 402, 403</i>
7	A three (3) page document designated "NYPD- Omniform System- Complaints" NYC Bates Stamped 01421-01423)	<i>FRE 402 , 403</i>

- 8 A one (1) page document designated 076 Precinct Tactical Plan) NYC Bates Stamped 01439
- 9 A three (3) page unsigned reports entitled " Firearms discharge, 76<sup>th</sup> Pct.' NYC Bates Stamped 01441- 01443 FRE 402, 403
- 10 A two ( 2) page document entitled NYPD Property Clerk Invoice # 3000127148 NYC bates Stamped 1320 - 1321 FRE 402, 403
- 11 AUTOPSY REPORT FOR TYJUAN HILL *FRE 402, 403*
- 12 Audio taped interviews of the Patrol Guide Hearings of defendants Patrick Quigley, Daniel Casella, Gregory Tobin, Sambath Ouk, Benigno Gonzales, Bradley Tirol, Cariley Rivera, Lyheem Oliver and witness P.O. Rodriguez. There were provided on a disc labeled NYC Bates Stamped # 2264 *FRE 402, 403, 802*
- 13 A one page document designated as NYPD CSU prepared by Det. Mathew dated 9/20/2012 detailing the injuries of defendant Patrick Quigley FRE 402, 403, 901
- 14 A one page document described as " complaint- followup- informational # 5 recording an *FRE 402, 403, 802*

- interview with Jomo  
Cunningham
- 15 LEFT BLANK
16. A one page document described  
as " complaint- followup *FRE 402, 403*  
informational; # 38 and Bates  
Stamped NYC 16
17. A one page document described  
as " complaint- followup *FRE 402, 403*  
informational # 38 and Bates  
Stamped NYC 160
18. A one page document described  
as property clerk's invoice # *FRE 402, 403*  
S050564 NYC bates stamped  
01620
19. A three page document  
described as Request for *FRE 402, 403*  
Laboratory Examination and  
Bates Stamped NYC 1621-23
20. A one page document described  
as Complaint follow up- *FRE 402, 403*  
medical examiner case and  
Bates Stamped NYC 1625

DESIGNATION	DESCRIPTION OF EXHIBIT	BASIS FOR OBJECTION
21	A one page document described as Complaint followup informational ME case and bates stamped NYC 1625	FRE 402, 403
22	Withdrawn by plaintiff	
23	A one page document described as Property clerk's invoice for 2 pairs of S & W handcuffs	FRE 402, 403
24	One page document bates stamped NYC 1662	FRE 402, 403
25	A one page report bates stamped 1662	FRE 402, 403
25	Judgement against Jose Cofresi	FRE 402, 403, 802, 901 and subject of a motion
2	Minutes of testimony of Jose Cofresi In Martin v NYC	FRE 402, 403 802, 901 And subject of a motion
27	3 page report bates stamped 2014-16	
28	Excluded by the Court	
29	Excluded by the Court	
30	Audio recording of a 911 call by Suzette Smoot	FRE 402, 403, 802 and subject of a motion
31	Audio of a 911 call produced on NYC 828	FRE 402, 403, 802, 901



DESIGNATION	DESCRIPTION OF EXHIBIT	BASIS FOR OBJECTION
32	Audio of a 911 call produced on NYC 828	FRE 402, 403, 802, 901
33	CSU 5593 Hamilton Ave. Northbound at west 9 <sup>th</sup> Street	FRE 402, 403
34	CSU 5578 depicts Henry Street From the corner of Huntington Ave.	FRE 402, 403
35	CSU 5578 depicts a pair of silver Handcuffs	FRE 402, 403
36	CSU 557 depicts a pair of black Handcuffs	FRE 402, 403
37	Left Blank	
38	Depicts can of OC Spray owned by Patrick Quigley	FRE 402 , 403
39	CSU 5558 depicts face of deceased	FRE 402, 403
40	CSU 5557 depicts deceased	FRE 402, 403
42	CSU 5556 depicts face of deceased	FRE 402, 403
44	CSU 5549 depicts deceased	FRE 402, 403

DESIGNATION	DESCRIPTION OF EXHIBIT	BASIS FOR OBJECTION
41	CSU 5556 depicts deceased	FRE 402, 403
42	CSU 5549 deceased	FRE 402, 403
43	CSU 5548 deceased	FRE 402, 403
44 (9)	Depicts Kel Tech 9mm pistol	FRE 402, 403
45	Depicts deceased & Kel Tech 9mm Pistol	FRE 402 & 403
46	Depicts deceased & Kel Tech 9mm Pistol	FRE 402 & 403
47	CSU 5526 depicts deceased and Hamilton Ave. Westbound at 9 <sup>th</sup> Street	FRE 402 ,403
48	CSU 1843 depicts defendant Lyheem Oliver	FRE 402, 403
49	CSU 1842 depicts defendant Lyheem Oliver	FRE 402, 403
50	CSU 1841 depicts defendant Lyheem Oliver	FRE 402, 403
51	CSU 1840 depicts defendant Lyheem Oliver	FRE 402, 403
52	CSU 1839 depicts defendant Lyheem Oliver	FRE 402, 403
53	CSU 1832 depicts defendant Sambath Ouk	FRE 402, 403
53	CSU 1843 depicts defendant Sambath Ouk	FRE 402, 403 53
54	CSU 1831 depicts defendant Sambath Ouk	FRE 402, 403 5
54	CSU 1830 depicts defendant Sambath Ouk	FRE 402, 403
55	CSU 1829 depicts defendant Sambath Ouk	FRE 402, 403

DESIGNATION	DESCRIPTION OF EXHIBIT	BASIS FOR OBJECTION
56	CSU 1828 depicts defendant Sambath Ouk	FRE 402, 403
57	CSU 1827 depicts defendant Daniel Casella	FRE 402, 403
58	CSU 1826 depicts defendant Daniel Casella	FRE 402, 403
59	CSU 1825 depicts defendant Daniel Casella	FRE 402, 403
60	CSU 1824 depicts defendant Daniel Casella	FRE 402, 403
61	CSU 1822 depicts Cairley Rivera	FRE 402, 403
62	CSU 1821 depicts Cairley Rivera	FRE 402, 403
63	CSU 1820 depicts Cairley Rivera	FRE 402, 403
64	CSU 1819 depicts Cairley Rivera	FRE 402, 403
65	CSU 1818 depicts Cairley Rivera	FRE 402, 403
66	CSU 1815 depicts defendant Patrick Quigley	FRE 402, 403
67	CSU 1814 depicts defendant Patrick Quigley	FRE 402, 403
68	CSU 1813 depicts defendant Patrick Quigley	FRE 402, 403
69	LEFT BLANK	FRE 402, 403
70	CSU 1812 depicts defendant Patrick Quigley	FRE 402, 403
71	CSU 1811 depicts defendant Patrick Quigley	FRE 402, 403

DESIGNATION	DESCRIPTION OF EXHIBIT	BASIS FOR OBJECTION
72	CSU 1815 depicts defendant Bradley Tirol	FRE 402, 403
73	CSU 1809 depicts defendant Bradley Tirol	FRE 402, 403
73	CSU 1808 depicts defendant Bradley Tirol	FRE 402, 403
74	CSU 1807 depicts defendant Bradley Tirol	FRE 402, 403
75	CSU 1806 depicts defendant Bradley Tirol	FRE 402, 403
76	CSU 1805 depicts defendant Benigno Gonzales	FRE 402, 403
77	CSU 1804 depicts defendant Benigno Gonzales	FRE 402, 403
78	CSU 1803 depicts defendant Benigno Gonzales	FRE 402, 403
79	CSU 1802 depicts defendant Benigno Gonzales	FRE 402, 403
80	CSU 1801 depicts defendant Benigno Gonzales	FRE 402, 403
81	Diagram of a human body face down	

**DEFENDANT'S EXHIBITS:**

<b>Designation</b>	<b>Description of Exhibit</b>	<b>Basis for Objection</b>
<b>A</b>	<b>Keltech 9mm firearm, magazine &amp; Cartridges</b>	<b>FRE 402, 403</b>
<b>B</b>	<b>Voucher for Keltech 9mm firearm, Magazine &amp; Cartridges</b>	<b>FRE 402, 403</b>
<b>C</b>	<b>Radio Transmission</b>	<b>FRE 402, 403</b>
<b>D</b>	<b>Surveillance video from the corner of Huntington &amp; Henry Street</b>	<b>FRE 402 , 403</b>
<b>E</b>	<b>DNA Report</b>	<b>FRE 402, 403</b>
<b>F</b>	<b>Still photographs from cell phone video</b>	<b>FRE 402,403</b>
<b>G</b>	<b>SPRINT REPORT</b>	<b>FRE 402, 403</b>

**DATED: New York, NY  
September , 2016**

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BY: /s/  
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/s/  
AMANDA SHOFFEL  
MATTHEW MODAFFERI

SO ORDERED:-----  
HONORABLE ALVIN K. HELLERSTEIN  
UNITED STATES DISTRICT COURT JUDGE